

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PEDRO SORIANO-CARELA,	§
	§ No. 31, 2020
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID No. 1707008057 (N)
Plaintiff Below,	§
Appellee.	§

Submitted: March 2, 2020

Decided: March 5, 2020

Before **SEITZ**, Chief Justice; **VALIHURA**, and **MONTGOMERY-REEVES**, Justices.

ORDER

Upon consideration of the notice to show cause and the appellant’s response, it appears to the Court that:

(1) On January 23, 2020, the Court received Pedro Soriano-Carela’s notice of appeal from a December 16, 2019 Superior Court order denying his motion for sentence modification. To be timely filed, the notice of appeal had to be received by the Clerk or a Deputy Clerk in any county on or before January 15, 2020.¹

¹ Del. Supr. Ct. R. 6(a); Del. Supr. Ct. R. 10(a); Del. Supr. Ct. R. 11(a).

(2) A notice of appeal must be timely filed to invoke the Court’s appellate jurisdiction.² The jurisdictional defect created by the untimely filing of a notice of appeal cannot be excused unless the appellant can demonstrate that the delay in filing is attributable to court-related personnel.³

(3) On January 24, 2020, the Senior Court Clerk issued a notice directing Soriano-Carela to show cause why his appeal should not be dismissed as untimely. Soriano-Carela filed a response to the notice to show cause, stating that he had an appointment at the law library and filled out the paperwork necessary to file a notice of appeal. However, Soriano-Carela maintains that he did not receive his inmate account statement—which he needed in order to complete his motion to proceed *in forma pauperis*—from the Department of Correction business office until January 17, 2020.

(4) In this case, the Court directed the State to respond to Soriano-Carela’s response to the notice to show cause. The State responded, noting that Soriano-Carela’s prison mail log indicates that he received mail from the Superior Court—presumably, the Superior Court’s December 16, 2019 order—on December 23, 2019, and, therefore, Soriano-Carela had more than three weeks to file a timely notice of appeal in this Court.

² *Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

³ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

(5) We conclude that Soriano-Carela's response to the notice to show cause does not provide a basis for excusing his untimely filing of the notice of appeal. A notice of appeal must be received by the Court within the applicable time period to be effective.⁴ Prison personnel, including employees of the business office, are not court-related personnel.⁵ Because the record does not reflect that Soriano-Carela's failure to file a timely notice of appeal is attributable to court-related personnel, the appeal must be dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED, under Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

⁴ Del. Supr. Ct. R. 10(a).

⁵ *Roy v. State*, 2014 WL 2957264, at *1 (Del. June 27, 2014).